



# WASHOE COUNTY

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CM/ACM\_\_\_\_\_

Finance\_\_\_\_\_

DA\_\_\_\_\_

Risk Mgt. – N/A

HR\_\_\_\_\_

Other\_N/A\_

## STAFF REPORT

BOARD MEETING DATE: April 12, 2016

**DATE:** April 5, 2016

**TO:** Board of County Commissioners

**FROM:** Mark Mathers, Budget Manager  
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**THROUGH:** Al Rogers, Director of Management Services  
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**SUBJECT:** Recommendation to approve and possible direction to County Staff for Collection of Prior Fiscal Years' AB 104 Gaming Tax and Repayment of Prior Years' Under-Collected AB 104 Accounts Receivables to Other Local Governments and Special Districts. (All Commission Districts)

### SUMMARY

On February 9, 2016, the Board of County Commissioners (BCC) received a report of agreed-upon procedures by the accounting firm of Grant Thornton LLP. The report verified new budget staff's calculations that beginning in Fiscal Year 2008-09 and continuing through Fiscal Year 2014-15, the County had under-collected AB 104 gaming taxes billed to gaming operators in the County. Based upon the legal opinion of the District Attorney's Office that has been received by the BCC, several options are available for both the collection of prior years' AB 104 gaming taxes from gaming operators located in Washoe County and the remittance of the amount that was under-collected to the ten other local government entities for this period.

Washoe County Strategic Objective supported by this item: Stewardship of Our Community.

### PREVIOUS ACTION

On June 9, 1991, upon the adoption of Ordinance Number 833, the Washoe County Board of County Commissioners imposed five new revenues as allowed by Assembly Bill 104, often referred to as the "fair share" bill. These new AB 104 revenues included a new gaming tax.

On February 9, 2016, the Board received a report of agreed-upon procedures for collection of the County's AB 104 gaming tax prepared by Grant Thornton LLP.

### BACKGROUND

Beginning in Fiscal Year 1991-1992, the County began collections of the AB 104 gaming tax. The tax is limited by law and is calculated by multiplying all other AB 104 revenues

projected for the fiscal year by a percentage based on historical gaming tax revenues for Fiscal Year 1990-1991. This percentage is 4.419175%.

Last year, new staff and management of the Budget Office observed that the amount collected from the AB 104 gaming tax had declined precipitously during the period of fiscal years 2008-2009 through 2014-15. The County Manager's Office contracted with the accounting firm of Grant Thornton LLP to validate the new budget team's calculations and to conduct a review of agreed upon procedures.

The total amount of monies that was under-collected from fiscal years 2008-2009 through 2014-15 was \$4,833,930. This is based on actual revenues of other AB 104 revenues received by all local government entities in the County, which the AB 104 gaming tax is based on, and therefore represents the upper limit that the gaming tax was under-collected. In reality, the gaming tax should be based each year on an estimate of other AB 104 revenues. Estimated revenues of this type are usually below actual revenues received. Of the \$4,833,930 that was under-collected, Washoe County's share was \$3,221,467 and other local governments' share was \$1,612,462. The other local governments affected and the corresponding amounts are:

City of Reno	\$ 743,265
City of Sparks	367,425
Truckee Meadows Fire Protection District	215,654
North Lake Tahoe Fire Protection District	131,306
Sierra Fire Protection District	79,690
Incline Village GID	47,838
Palomino Valley GID	8,060
Verdi Television District	7,544
Carson Truckee Water Conservancy District	6,462
Sun Valley GID	5,219
<b>Total</b>	<b>\$ 1,612,462</b>

Washoe County management has contacted many of the gaming operators to brief them on this issue, and a letter has been sent to all gaming operators notifying them of this error.

The District Attorney has opined that Washoe County may retroactively bill gaming operators for at least several years' past due amounts. There also may be a statute of limitations limiting the number of years that the other local governments and special districts above may recover their share of the amount under-collected. After much consideration of these issues, staff is recommending that the County forego retroactively billing gaming operators for any amount owed during fiscal years 2008-09 through 2014-15 for the following reasons:

- Over 340 commercial businesses receive gaming bills quarterly. During the seven-year period that gaming taxes were under-billed, many of these operators

have ceased operating, changed ownership (sometimes more than once), and the basis for their bill may have changed many times.

- We believe that any attempt to retroactively collect not only will involve many recalculations based on the above facts, but will be met with legal challenges with collections delayed for many years and involve a significant amount of staff time.

There have been other situations in the past in which great staff efforts were required to either retroactively collect past taxes due or refund amounts owed to residents, most recently the Incline Village property assessment issue. Some may draw parallels between the County's efforts to collect past property taxes or other fees due from delinquent taxpayers or businesses. However, a fundamental difference exists between those efforts and the situation discovered here and that is that the County itself miscalculated the AB 104 gaming tax. The amount due represents a significant amount and this recommendation is not made lightly, but for the County to retroactively attempt to collect millions of dollars of revenues from business owners who paid the amount they were billed, have closed their financial books and made a multitude of decisions based on their financial situation since then, which now could be severely disrupted, raises many questions and concerns.

At the same time, County staff believes it is appropriate and necessary to remit invoices for the amount that has been under-charged to each gaming operator for the current fiscal year (Fiscal Year 2015-16). The total net amount due is \$994,696. Due to this large amount, County staff intends to allow gaming operators to pay this amount over the four quarters of Fiscal Year 2016-17.

For the ten local governments that did not receive the proper amount of their share of the AB 104 gaming taxes, staff is seeking direction from the Board on payment of the amount calculated for the period of fiscal years 2008-2009 through 2014-15. In any case settlement agreements with the other local governments would be prepared and executed before distribution of any amount.

### **FISCAL IMPACT**

The fiscal impact of the under-collection of AB 104 gaming taxes is dependent on policy decisions of the Board regarding the period to retroactively collect this tax and the period of repayment to other affected government agencies.

Should the Board approve full repayment, the ten other governments' share of the amount under-collected during fiscal years 2008-2009 through 2014-15 that would be repaid is approximately \$1.6 million. If the Board approves a time period less than the seven (7) years the amount repaid would be dependent on the number of years approved. If all seven years are approved, the County would pay the amount owed to these agencies with its share of AB 104 gaming taxes collected in fiscal years 2015-2016, 2016-17 and possibly through 2017-18.

**RECOMMENDATION**

Confirm staff's recommendation to forego retroactively billing AB 104 gaming taxes that may be due to the County and provide direction on the number of years of under collection to remit to the ten other local government entities listed here for repayment of their share of the amount of AB 104 gaming taxes collected.

**POSSIBLE MOTIONS**

Should the Board agree with staff's recommendation, a possible motion would be: "Move to confirm staff's recommendation to forego retroactively billing AB 104 gaming taxes that may be due to the County and provide direction on the number of years of under collection to remit to the ten other local government entities for repayment of their share of the amount of AB 104 gaming taxes collected."